BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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IN THE MATTER OF	)	
	)	
PETITION FOR RULEMAKING	)	
OF THE NATIONAL	)	**CC DOCKET NO. RM-8606**
ASSOCIATION OF	)	
ATTORNEYS GENERAL	)	
PROPOSING ADDITIONAL	)	
DISCLOSURES BY SOME	)	
OPERATOR SERVICE	)	
PROVIDERS	)	
	)	
AND	)	
	)	
COMPTEL's FILING IN CC	)	
DOCKET NO. 92-77	)	**CC DOCKET NO. 92-77**
PROPOSING A RATE CEILING	)	
ON OPERATOR SERVICE	)	
CALLS	)	

COMMENTS OF
THE COLORADO PUBLIC UTILITIES COMMISSION STAFF

April 4, 1995

I. INTRODUCTION

1. The Staff of the Colorado Public Utilities Commission ("Colorado PUC Staff") respectfully submits these comments before the Federal Communications Commission ("FCC") regarding two related issues: the Additional Disclosures by Some Operator Service Providers brought in a Petition for Rulemaking ("Petition") by the National Association of Attorneys General ("Attorneys General") and the Proposal for a Rate Ceiling on Operator Service Calls brought by Comptel. The Colorado PUC Staff posits that the proposal made by the Attorneys General, with minor modifications, is necessary and appropriate for the prevention of consumer abuses by some participants in the operator services / aggregator industry. The rate cap proposal is less desirable in our opinion and should only be considered if the FCC finds that our modified disclosure proposal is impossible to implement. The Colorado PUC and its Staff have been actively involved in attempts to eliminate consumer abuses through traditional regulatory actions[1]. However, such traditional regulatory action has met with substantial legal resistance on the part of the industry. At the present time, after trying unsuccessfully to eliminate the abuses through more traditional regulatory action (including a system of soft rate caps), the Colorado PUC Staff has come to the conclusion that something similar to the recommendation made by the Attorneys General is necessary and appropriate action for the FCC to take at this time. In these comments, the Colorado PUC Staff will describe its rationale for general support of this Petition and suggest some possible enhancements. We will also provide rationale for the formulation of appropriate rate caps, either for use in our modified disclosure proposal or in a pure rate cap scheme.

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[1] As will be demonstrated in the body of these comments, the Colorado PUC and its staff have acquired broad experience in the regulation of this industry, not only through Colorado-specific investigations, but also by communications with other state regulatory and consumer organizations, the staff of the Federal Communication Commission, the National Association of Attorneys General and the National Regulatory Research Institute. The Colorado PUC staff has also maintained close contact with the industry itself, being asked to attend and speak at meetings of the American Public Communications Council and the Colorado Payphone Association concerning regulatory issues in the industry. Additionally, Colorado PUC staff has been directly involved in numerous dockets before the Colorado PUC and local courts.

II. COLORADO PUC REGULATION OF THE OPERATOR SERVICES INDUSTRY

2. In order to fully understand our current position, it is necessary to provide a brief history of the regulation of the industry in Colorado. In 1984 and 1985, the Colorado General Assembly enacted legislation that removed aggregators from the definition of a public utility, thus removing these providers from Colorado PUC jurisdiction[2]. In 1987, the Colorado General Assembly enacted comprehensive telecommunications legislation[3] that, among other things, provided the Colorado PUC with the authority to structure regulation of different telecommunications services to encourage competition in markets where such competition could provide benefits to the consumers of Colorado. Subsequent to this statutory action, the Colorado PUC made a determination in a rulemaking proceeding[4] that most operator services, as provided by competitive interexchange carriers, needed no regulatory oversight[5].

3. The alternative operator services ("AOS") industry emerged in response to demands created by the growth of the independent public payphone ("IPP") and hospitality industries[6]. The AOS, IPP, and hospitality industries discovered substantial revenues could be generated

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[2] §40-1-103 (1)(b)(III and IV), Colorado Revised Statutes. Item III was enacted in 1984. Item IV was enacted in 1985.

[3] §40-15-101 *et seq.*, Colorado Revised Statutes.

[4] Docket No. 89R-105T, *In the Matter of Interpretative Rules of the Public Utilities Commission of the State of Colorado Concerning Intrastate Telecommunication Services Regulated under Article 15 of Title 40*, Decision No. C89-290, dated March 1, 1989.

[5] Certain non-optional operator services remained under regulation according to this Colorado PUC decision. Those regulated services included calls made at local exchange company coin-operated telephones where coins are used to pay for the call, calls made from exchanges where direct dialing is not available, calls made by disabled individuals, calls made by inmates at penal institutions where an operator is required to place a call, operator assisted call reconnection, directory assistance, and basic emergency services.

[6] IPPs and the hospitality industry are commonly referred to as aggregators because they aggregate the services of other providers to present one package to the consumer.

from consumers using these public phones[7]. Consumers also discovered that they could not gain access to their carrier of choice, but instead, were required to use the AOS selected by the public phone operator. Consumers received outrageous bills for calls for which they expected to pay substantially less. Calls made through calling cards issued by the customer's interexchange carrier of choice were billed by another provider at much higher rates.

4. In hopes of combating this growing problem, in 1991 the United States Congress enacted the Telephone Operator Consumer Services Improvement Act ("TOCSIA"). This law set forth specific requirements for operator services providers and aggregators. This legislation was primarily intended to combat the abusive practices of many AOS providers by mandating the unblocking of phones presubscribed to an AOS provider. This unblocking allows the consumer the ability to "dial around" the presubscribed carrier (AOS) of the aggregator. Additionally, the legislation requires the AOS providers to inform the consumer of his or her options, to provide other information and services without charge to the consumer, and other requirements directed at the elimination of abusive practices.

5. In 1992, because of growing consumer complaints surrounding this industry, the Colorado PUC promulgated rules that provided for identical regulations as those prescribed by the FCC based on TOCSIA. Thus, the Colorado PUC asserted regulatory jurisdiction over additional, more traditional, operator services. The new Colorado rules required all AOS providers to obtain a Certificate of Public Convenience and Necessity ("CPCN") and file tariffs. Over the period of the next two years, the Colorado PUC certificated approximately 80 AOS providers. However, because of its initial belief that compliance with the new rules would properly educate consumers, the Colorado PUC did not affirmatively review the rates of these AOS providers. As long as the AOS providers complied with federal and state requirements, the Colorado PUC believed that the market should have an opportunity to function properly

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[7] In a recent editorial, Mr. Eric Stebel, managing editor of *Public Communications Magazine*, states that "(d)uring this time, operator service providers were popping up in every size, shape and form. This new opportunity turned the payphone operators' nickels, dimes and quarters into hundreds of dollars each month." February 1995, p.9.

without additional regulatory controls.

6. In the period following promulgation of the rules, consumer dissatisfaction with the AOS industry increased dramatically, manifested by a growing number of complaints from consumers[8]. In response to this growing consumer dissatisfaction, the Colorado PUC introduced amendments to the existing rules which specified a modified form of rate regulation. This amendment sought to curb abuse by directly controlling prices and other operating practices. First, it allowed AOS providers whose rates were at or below an industry standard[9] to receive virtual rate deregulation. Second, AOS providers desiring rates above the industry standard would be required to support those rates through traditional regulatory justification (*e.g.*, cost of service studies). Third, it prohibited AOS providers from collecting location surcharges on behalf of aggregators. Fourth, it required AOS providers specifically to tariff operator handled rates for local calls. Fifth, for purposes of branding and rate quotes for a collect or third number billed call, the customer was defined as the person accepting the charges. The Colorado PUC issued its final order on the proposed amendments to the rules on February 28, 1994.

7. Prior to the effective date of the amendments to the rules, the Colorado Payphone Association and a consortium of AOS providers filed a lawsuit for judicial review in Denver District Court[10] requesting that the amendments to the rules be declared unlawful. The

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[8] During fiscal year 1991-1992, the commission had 93 consumer contacts relating to AOS providers. In fiscal year 1992-1993, the commission had 191 consumer contacts relating to AOS providers.

[9] The standard developed by the Colorado PUC was the maximum tariff rates for regulated interexchange carriers. In effect, this allowed the AOS provider to tariff its services equal to the maximum rates on file for all interexchange carriers. For example, AT&T has a maximum rate in its tariff that is approximately 30% above its current rate. Therefore, the AOS provider could price its service 30% above AT&T for intrastate services.

[10] Case No. 94 CV 1322 *Midamerica Communications Corporation d/b/a LDDS Communications, Teltrust Communications Services, Inc., International Pacific, Inc, and National Technical Associates, Inc. v. Public Utilities Commission of the State of Colorado and Commissioners Robert Temmer, Christine E. M. Alvarez and Vincent Majkowski* consolidated with Case No. 94 CV 0977 *Colorado Payphone Association, a Colorado non-profit corporation v. Public Utilities Commission of the State of Colorado* (continued...)

petitioners in this lawsuit were granted stay of the rule amendments by the court on April 28, 1994. Although all briefs have been filed in the case, no decision has been rendered on the merits of the case. Consequently, the Colorado PUC may not enforce any of the amendments.

8. Later in 1994, acting under its existing statutory mandate to ensure just and reasonable rates[11], the Colorado PUC initiated show cause proceedings against three of the largest AOS providers. The Colorado PUC Staff assumes a burden of proof that the rates of these providers currently on file with the Colorado PUC are not just and reasonable[12]. Since these dockets are still in the litigation stage, it is inappropriate to discuss details of the cases.

9. The amended rules and show cause proceedings have had no effect on AOS provider rates. This is due in part to a seemingly endless supply of financial resources the AOSs and IPPs can muster in order to litigate, to lobby legislators, and to delay corrective measures. Meanwhile, the rate at which complaints are received by the Colorado PUC Staff remains unabated.

III. COLORADO PUC STAFF DISCLOSURE PROPOSAL

10. In their proposal, the Attorneys General proposed that the FCC adopt a requirement that AOS providers "whose rates and connection fees and other charges are not at or below dominant carrier rates provided to consumers, through a voice-over following carrier identification," a statement that the consumer may be charged more than they would from their regular telephone company.

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[10](...continued)
and Commissioners Robert Temmer, Christine E. M. Alvarez and Vincent Majkowski. Since its initial filing, the parties have changed. LDDS, IPI, and NTA have withdrawn and U.S. Long Distance, Inc. and ONCOR Communications have joined in the suit.

[11] Show cause proceedings were begun against Teltrust Communications, Inc. (Docket No. 94C-381T), ONCOR Communications, Inc. (Docket No. 94C-382T), and U.S. Long Distance, Inc. (Docket No. 94C-383T).

[12] Hearings were held in Docket No. 94C-381T (Teltrust) in November, 1994 and in January, 1995. Currently, a recommended decision by the Administrative Law Judge is to be forthcoming shortly.

11. We agree with this general approach offered by the Attorneys General and encourage the FCC to go further by requiring disclosure of price prior to call connection and incurrence of charges. First, the FCC should require this disclosure to include a rate quote for the total charges for the initial rate period (including any and all surcharges) and for each subsequent rate period[13]. Second, the FCC should require a system whereby the aggregator is listed as the responsible provider on the customer's bill. These two recommendations, coupled with the general proposal tendered by the Attorneys General, would likely allow the industry less freedom to exploit and abuse consumers and to function more closely to a competitive market whereby consumers vote with their dollars in a manner consistent with market economies and societal customs of equity. Finally, we recommend that the FCC adopt a more complete definition of "dominant carrier rates" as contained in the Petition that includes an average of rates for a "market basket" of the largest interexchange carriers and a small percentage above that to account for variances in competitive rates.

12. The Colorado PUC Staff's rationale supporting up-front quoting of call charges is essentially the same as that offered by the Attorneys General. Disclosure of prices prior to consummation of a transaction is a basic tenet of our economic system. Explicit knowledge of price is inherent in virtually every product we purchase in this country[14]. A problematic aspect

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[13] Although quoting actual initial period and additional period rates is our preferred method, and we believe the technology is available to provide the information, there are other possibilities that might be acceptable. For example, quoting a rate for a call of average duration (five to seven minutes) might be acceptable, as long as it conforms to the actual rates for the time of day period and the distance. It is our opinion that most, if not all, AOS providers can rate their calls on a real-time basis, either for purposes of live operator rate quotes or for production of billing data. Therefore, it seems only a minor extension of that system to provide mechanized voice-over quotes for initial period and additional period rates for the specific call in question. The requirement the FCC eventually decides upon should allow for relatively minimal amounts of time for compliance.

[14] Prices for operator-assisted telephones were not, as a matter of custom, disclosed in the pre-divestiture era. This was due to widespread knowledge among consumers that rates charged were regulated and thoroughly policed. When "new" providers of payphone and operator services, that is, non-monopoly local exchange providers, were allowed to enter the market, customer perceptions and regulatory practices lagged these developments. Consumers did not know until after being overcharged, that the rates were not tightly regulated. Likewise, regulators either did not have or chose not to use the

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of a strict rate cap proposal is enforcement. The Colorado PUC does not have, nor could afford, a staff to police compliance, either for the traditional AOS providers or "operator-in-a-box" facilities. Some enforcement is necessary, but will not occur absent funding. Disclosure requirements proposed in the Petition and supplemented in these comments would provide price information prior to purchase. Price disclosure allows the consumer to be sufficiently informed to weigh alternatives and make informed choices. A large majority of the consumer complaints in Colorado regarding rates of AOS providers indicate that prior rate disclosure would likely have afforded increased, if not adequate protection to the consumer.

13. Colorado PUC experience indicates aggregators should be the focal point of customer bills in that the proprietor at the point of sale is inaccessible to consumers after the fact. Simply, bills typically are rendered by a local exchange company, listing a clearing house, such as Zero Plus Dialing (ZPDI), Resurgens, or Operator Assistance Network (OAN). Penetration through the billing agent requires excessive consumer diligence. Of the relatively minuscule proportion of consumers who progress to the AOS provider, to our knowledge, not one consumer contacted the payphone owner to complain of rates.[15] We have determined that the current focus on the AOS industry as the interface with the consumer is flawed. AOS providers have informally indicated and testified formally[16] that the customer of the AOS

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[14](...continued)
power to mandate price disclosure. Simply, customers generally were ignorant of regulatory changes and regulators as a group, driven in part by fear and part by market ideology, did not institute reasonable consumer protection measures necessary to affect transition to a deregulated market for these services.

The measures contemplated hereinabove are, therefore, a reasonable compromise between *laissez-faire, caveat emptor* capitalism, and legitimate consumer education. The measures do not preclude charging exorbitant rates, but give consumers information crucial to informed choice. This simple measure makes significant inroads to curing a market failure of impacted information, thus furthering sovereignty of consumers, consistent with the theory and practice of a market economy.

[15] In sworn testimony before the Colorado PUC, a payphone owner proudly stated he had ". . . never received a complaint over rates. . ." This testimony was given as support for the notion that rates charged at these IPPs were not excessive. We take the view that, instead, the aggregators are so well hidden from the consumer's view, they are effectively invisible.

[16] Docket No. 94C-381T - Teltrust Communications Show Cause.

provider is not the end user or consumer, but in fact, the customer of the AOS provider is the aggregator, *i.e.*, the IPP. The AOS providers compete for aggregators. They do not compete for consumers. However, the AOS provider's rates in its Colorado intrastate tariffs are the rates charged to the end-use consumer, not the rates charged to its "customers," the aggregators. The rates charged aggregators oftentimes are an elusive piece of information, mostly accomplished through verbal agreements or vague contracts[17]. It is also our opinion, based upon extensive analysis of several AOS operations, that a substantial portion of the resulting high rates charged by many of these providers may be large pass-through amounts to the aggregators[18]. All of these findings point to the conclusion that AOS providers are, in fact, but one input to the aggregator's total service, and that the aggregator, not the AOS provider, should be the focus for the consumer interface, and likewise regulatory attention.

14. If one assumes that the aggregator is the focus for the consumer interface, rather than the AOS provider, the situation, and a feasible remedy, become clearer. The name, "aggregator," implies its function. The aggregator assembles many inputs from other providers to present a product to the end-use consumer. It purchases or rents space from a location, *e.g.*, a convenience store, leases an access line, interexchange switched access, and possibly dedicated access from the local telephone company, purchases interexchange usage and/or dedicated interexchange circuits either directly or indirectly from interexchange carriers, purchases operator services from operator services providers, purchases equipment from various equipment

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[17] In written contracts obtained by the Colorado PUC Staff from AOS providers, it is apparent that some AOS providers do not specify exact terms of the price for its services to aggregators in the contracts.

[18] In most cases, there is a two-tier method for pass-through benefits to the aggregator. First, the AOS provider charges rates that implicitly or explicitly include a percentage of the total charges to be passed-through to the aggregator. This can be accomplished either in a commission structure (*e.g.*, 30% of total charges) or on an unbundled, cost-plus basis wherein the AOS provider subtracts its costs from the total charges and remits the remainder to the aggregator. In both cases, the aggregator receives a substantial portion of the revenues collected under the company's basic rates. The second tier involves the use of what is known as a premise imposed fee ("PIF"), location surcharge, premise surcharge, or any other similar name. This is an extra surcharge, in addition to the usage rates and the operator surcharge, that claims to collect additional costs associated with aggregator costs. These charges can range from zero to ten dollars per call.

vendors, and purchases billing and collection services (usually indirectly through the AOS provider who in turn purchases them from a clearing house). However, even the most tenacious consumer has no realistic chance of discovering that aggregator costs are the actual source of the largest portion of the rates being charged[19]. The customer receives a bill from the LEC that has a separate page for the AOS provider charges. This bill normally directs the customer to call the billing agent (*e.g.*, Zero Plus Dialing, Integretel or Operator Assistance Network). Only after extreme persistence can a consumer even discover a contact telephone number for the AOS provider. We are not aware of any consumers who successfully followed the path the next step back to the aggregator. This must change for a truly competitive market to emerge in this industry. If no responsibility is shouldered by the primary industry player, no significant movement toward a competitive market is possible.

15. In order to provide a benchmark rate level, upon which all other providers are measured, a "dominant carrier rate" or more accurately, a maximum market rate, must be determined. This rate would be developed for comparison of AOS rates. Any AOS rates that exceeded the dominant carrier/market rate would be required to perform the disclosure[20]. It is assumed that the AOS providers currently have the capability to perform data base inquiries (*e.g.*, credit card validation) during the set-up portion of the call. We are also convinced that most, if not all, AOS providers have the capability of accessing a data base that provides specific rates for the specific call in question. In today's information age, the data base inquiry to determine the specific rate for a specific call and the provision of that information through an announcement is relatively simple. Any proclamation by the industry that such disclosure would

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[19] In our investigations, it is not abnormal for an AOS provider to pass-through over 50% of the total revenue it receives back to the aggregator on an operator handled call.

[20] It is entirely possible that some OSPs may provide service at rates that have different mileage bands, time-of-day discounts, etc. from those of the market basket providers. It is not our intention to propose a system that requires extensive comparisons for every possible permutation of rates. The intention is to provide a comparison of average usage rates for all times-of-day and mileages. If an OSP's average rate (including usage and surcharges) is at or below the market rate, no disclosure is required. If the OSP's average rate (including usage and surcharges) is above the market rate, disclosure is required.

require extensive cost outlays should be thoroughly scrutinized.

16. Since we believe it inappropriate to measure all AOS providers on the basis of one carrier's rates (*i.e.*, AT&T), we suggest an averaging approach. Therefore, we propose that the FCC develop an average rate level for a "market basket" of predominant players in the market (*e.g.*, AT&T, MCI, SPRINT, and LDDS). For the operator surcharges (*i.e.*, Credit Card, Collect, Person, etc.), a simple average of the predominant providers' rates may be made. For the usage element, it is somewhat more complicated. However, the Colorado PUC Staff has employed a useful method that compares the overall average carrier usage rates on a common basis. This average is developed using calling characteristics (time of day, length of haul, and duration) and rates of the carrier to produce an average "rate per minute" for that carrier. This average rate per minute for each carrier is then averaged between the "market basket" providers to produce the overall average usage rate[21]. Once the average has been calculated, we recommend that the so-called dominant carrier/market rate be equal to the lesser of either 5% above the highest rate of any of the predominant carriers or two standard deviations above the mean of the predominant carrier rates[22]. This method provides an adequate maximum cushion of 5% above the highest carrier's rates when rates vary widely between predominant carriers and less cushion when the rates for the competitive carriers are extremely close together (likely indicating more competition). This approach using a "market basket" eliminates burden on the dominant carrier's flexibility.

17. If these three items are added to the Attorneys General proposal, we predict a

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[21] An example might prove useful. Suppose we use AT&T, MCI, SPRINT, and LDDS for the example. If we substitute AT&T's interstate rates into AT&T's traffic distributions, we might find that AT&T charges an average of 25¢ per minute (over all times of day and lengths of haul). Repeat the exercise for MCI (24.5¢), SPRINT (25¢), and LDDS (24¢). If we take a simple average of these rates, we get an overall average of 24.6¢ per minute. Note: These numbers are all fictitious.

[22] Using our example above, the average was 24.625¢ per minute. Two standard deviations is 0.829¢. Therefore, the average plus two standard deviations equals 25.45¢ per minute. A calculation of 5% above the maximum rate (25¢ per minute) is 26.25¢ per minute. Since 25.45¢ (average plus two standard deviations) per minute is less than 26.25¢ per minute, we would use the 25.45¢ per minute as the dominant carrier rate.

movement to a more consumer-friendly, more competitive market for public phones but without the requirement of an unnecessary and excessively expensive network overlay, such as was proposed in Billed Party Preference[23]. If consumers are specifically made aware of rates to be charged for rates higher than the market rate determined above, three possibilities emerge: (1) AOS providers voluntarily will lower their rates to reflect rates charged by major carriers in order to remain competitive; or, (2) AOS providers that continue to charge higher rates will experience significant increases in dial-around and consumer complaints derived from increased consumer awareness; or, (3) public phones in high cost areas which require higher rates to remain profitable, will have the opportunity to exist[24].

IV. RATE CEILING PROPOSAL BY COMPTEL

18. The Colorado PUC staff has concluded that the FCC should consider hard rate ceilings as a second choice, after exhausting any possibility of implementing the proposed disclosure. It is our experience that the rate ceiling issue is clouded by other contentious factors that might prove impossible to reconcile or enforce. In simple form, we see two major issues in the proposal by Comptel. First, the AOS providers presenting this proposal are representative of the middle tier of operator service providers[25]. It is our opinion that these middle tier

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[23] See *Comments of the Colorado Public Utilities Commission* in CC Docket No. 92-77, *In the Matter of Billed Party Preference for InterLATA Calls*, dated July 19, 1994.

[24] This high cost area is a circumstance that deserves further examination. In true high cost areas, the AOS provider/payphone owner may consciously decide to charge higher rates and disclose those rates. However, a possible system of waivers of FCC rules concerning call blocking might be considered, thus allowing the payphone to require all calls to be made using the carrier of choice. On the more cautious side, careful examination of this issue has revealed that supposed high cost areas, *e.g.*, low income housing, turn out to be highly profitable because of the high incidence of coin-paid traffic and low use of alternative billing (credit cards). Therefore, any exemptions or waivers granted by the FCC should consider relevant factors in the determination of true high cost phones. Also, in such instances, lowering coin charges may lead to increased total revenues, rendering such phone profitable without contribution or subsidy from operator-assisted calling.

[25] The operator services industry can be broken into three clearly discernable tiers. The first tier is comprised of the major interexchange carriers. These providers offer operator services at rates most

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providers are trying to distance themselves from the third tier providers without having to provide service at rates equivalent to the competitive market represented by the first tier providers. Second, the rates proposed by Comptel are still excessive when compared to consumer expectations[26]. See Figure 1 comparing the Comptel rate ceilings to AT&T rates for operator station calls (including credit card and other station).

19. If it is decided to implement a rate ceiling as proposed by Comptel, we recommend that the FCC adopt a more realistic rate ceiling such as the one proposed previously in these comments at ¶ 16. The rate caps proposed by Comptel are excessive, if not outrageous, for the kinds of calls that receive the largest number of complaints (short duration, credit card or collect calls). This market rate provides a common basis for the entire industry to operate, with sufficient opportunity to earn reasonable profit, but without unreasonable, unintended and improper subsidies to any parties in the process. The ideological foundation for the introduction of

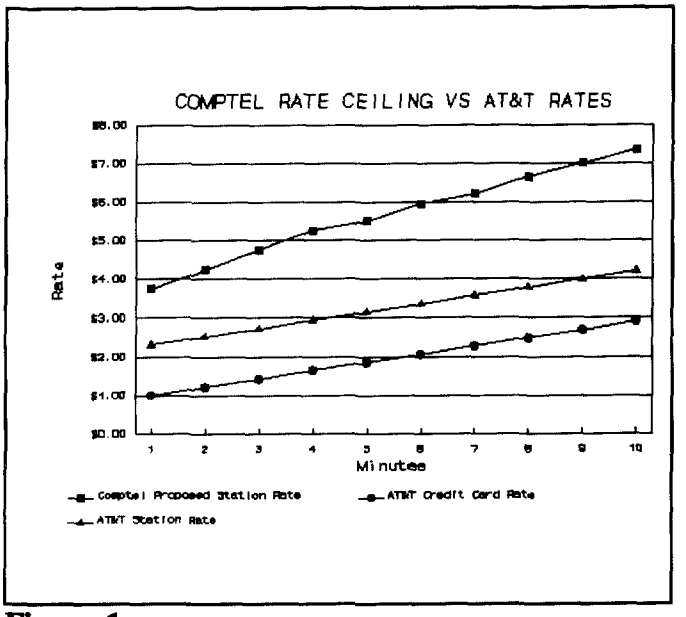

Figure 1

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[25](...continued)
consumers and regulators have found to be reasonable and representative of healthy competition. The second tier (of which the Comptel group seems to represent) provides operator services at significantly higher rates than the first tier, usually between 50% and 150% above. The incrementally higher rates of this second tier providers are premised upon the provision of subsidies to the public phone owner. The third tier are comprised of providers that are charging rates between 200% and 1000% higher than first tier provider rates. These providers are competing for public phone providers by offering even higher subsidies.

[26] We have performed an examination of the rates proposed by Comptel to compare these rates with one dominant carrier. The Comptel rates produce rates for calls under 10 minutes that are significantly higher than the dominant carrier rates. For example, the Comptel rates for a customer dialed calling card call range from 160% to 271% above the dominant carrier rates for the same service. The Comptel rates for a station collect call range from 62% to 75% above the dominant carrier rates.

competition for these services was that regulation inherently was inefficient. New entrants, unencumbered by regulation costs would pressure incumbent firms on all fronts, *e.g.*, service quality, service innovation, technology, and most importantly, price. Theoretical fables notwithstanding, the actual experience over many years tells a different story. Many OSPs and aggregators put no pressure, price or otherwise, on incumbents. Despite opportunities and orders to reduce rates, a few large OSPs continue to charge rates well above prevailing market rates. Without statutory or other legal force, consumer ignorance will allow price gouging to continue over the foreseeable future. Simply, if new entrants cannot, or choose not to compete on price, then government should not institutionalize inefficiency, anti-competitive behaviors, or a guaranteed revenue stream through artificially high rate caps. The Comptel rate caps do just that. AOS providers and IPPs have argued that Comptel-level rates are necessary for many IPPs and AOS providers to remain in business. If this is the case, sufficient capacity exists elsewhere in the industry such that market exit by such inefficient firms is in the public interest.

V. CONCLUSION

20. It is imperative that the FCC act quickly to institute changes in its operator services rules to accomplish a system whereby disclosure of operator services rates can occur at public telephones. It is also recommended that the FCC overlay the suggestions made herein to enhance this proposal. First, the FCC should require actual rates be quoted for all type of calls when any AOS provider's total charges are higher than those of the market rates. Second, the FCC should require that all billing and collection be done in the name of the aggregator instead of the AOS provider. Third, the FCC should adopt a more specific determination of dominant carrier/market rates as specified above.

Dated at Denver, Colorado this 4th day of April, 1995.

Respectfully submitted,

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